

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMAL H. ROBERTS,	§
	§ No. 113, 2012
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1103003228
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 16, 2012

Decided: April 25, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 25<sup>th</sup> day of April 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Jamal H. Roberts, filed an appeal from the Superior Court’s January 16, 2012 violation of probation (“VOP”) sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on

the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record before us reflects that, in June 2011, Roberts entered a plea of guilty to one count of Non-Compliance With Bond Conditions. He was sentenced to 2 years of Level V incarceration, to be suspended for 1 year of Level III probation. In September 2011, Roberts was arrested and charged in connection with an automobile chase with police officers. In November 2011, Roberts was charged with a VOP. After a contested hearing in December 2011, Roberts was found to have committed a VOP.

(3) In January 2012, Roberts again was charged with violating his probation. The matter was set for a contested hearing on February 16, 2012. Prior to the hearing, on February 14, 2012, Roberts entered a plea of guilty to Disregarding a Police Officer's Signal and Reckless Driving. Because of Roberts' new charges, the Superior Court found that Roberts had committed a VOP without taking any testimony on his alleged technical violations. He was re-sentenced to 1 year, 9 months and 26 days at Level V, to be suspended after 1 year and 6 months for probation. Roberts then filed the instant appeal.

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<sup>1</sup> Supr. Ct. R. 25(a).

(4) In his appeal, Roberts claims that a) the Superior Court improperly relied on the statements of his probation officers at the hearing; b) the State committed a discovery violation; c) the Superior Court erred by not permitting him to cross-examine witnesses; d) his attorney provided ineffective assistance; e) the Superior Court failed to impose a 6-month period of probation in violation of Del. Code Ann. tit. 11, § 4204(l); and f) the Superior Court provided an erroneous interpretation of Department of Correction (“DOC”) policy in connection with his November 2011 VOP.

(5) Neither the Superior Court docket nor the Supreme Court docket reflects that Roberts ever requested a transcript of the VOP hearing in which his claimed errors allegedly occurred. The failure to include a transcript of trial court proceedings precludes appellate review of a claim of error with respect to those proceedings.<sup>2</sup> Roberts’ first, second, third and sixth claims involve alleged errors occurring during the February 16, 2012 VOP hearing. In the absence of a transcript, this Court is unable to review any claims relating to that hearing.

(6) Roberts’ remaining two claims are equally unavailing. His claim of ineffective assistance of counsel will not be reviewed by this Court in the

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<sup>2</sup> *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

absence of a full adjudication of the issue by the Superior Court.<sup>3</sup> Because there is no evidence that the Superior Court previously ruled on that claim, we decline to address it for the first time in these proceedings. Roberts' claim that the Superior Court failed to sentence him to a 6-month period of probation as required by statute should be addressed to the Superior Court in the first instance in a motion for sentence modification.<sup>4</sup>

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>3</sup> *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

<sup>4</sup> Super. Ct. Crim. R. 35.